

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MEYNARD DESIGNS, INC. AND EARTH,  
INC.

Plaintiffs and  
Counterclaim-Defendants,

v.

EARTH PRODUCTS INC.

Defendant and  
Counterclaim-Plaintiff.

EARTH PRODUCTS INC.

Third-Party Plaintiff and  
Counterclaim-Defendant,

v.

PLANET, INC.

Third-Party Defendant and  
Counterclaim-Plaintiff.

CIVIL ACTION NO. 05 cv 11781 NMG

**MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION BY  
DEFENDANT AND COUNTERCLAIM-PLAINTIFF EARTH PRODUCTS INC. FOR  
THE ISSUANCE OF A LETTER OF REQUEST**

Defendant and counterclaim-plaintiff Earth Products Inc. respectfully submits this memorandum of law in support of its unopposed motion for the issuance of a letter of request to obtain testimony and documents from witnesses in the Cayman Islands related to the above-captioned matter. A proposed order and letter of request are attached as Exhibits 1 and 2 to the Affidavit of Derrick W. Toddy, sworn to on June 5, 2007, in support of this motion (the “Toddy Affidavit”).

The plaintiffs in this action allege that Earth Products Inc. is infringing trademarks owned by plaintiffs relating to the mark "EARTH." Earth Products Inc. is defending on multiple bases, including on the basis that the alleged marks were or have been abandoned, and are therefore invalid and/or unenforceable.

The persons named below have information of critical importance to the actions before the Court. Earth Products Inc. respectfully requests that the Court issue a letter of request to obtain their testimony and documents. The Court has the power to transmit such a letter of request to the appropriate authority in the Caymans pursuant to 28 U.S.C. § 1781 and the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, opened for signature Mar. 18, 1970, 23 U.S.T. 2555, 847 U.N.T.S. 231.

Earth Products Inc. therefore respectfully request that the Court (a) sign and have the Clerk affix the seal of the Court to the letter of request seeking testimony and documents from Thomas Clark and Kareen Watler, and (b) forward the original signed, sealed letter of request to the undersigned for delivery by local counsel in the Cayman Islands to His Excellency the Governor of the Cayman Islands, Government Administration Building, Elgin Avenue, George Town, Grand Cayman, Cayman Islands BWI3.

Dated: June 6, 2007

By: /s/ Derrick W. Toddy  
**J. Christopher Carraway** (*pro hac vice*)  
Email: chris.carraway@klarquist.com  
**Cindy L. Caditz** (*pro hac vice*)  
Email: cindy.caditz@klarquist.com  
**Scott E. Davis** (*pro hac vice*)  
Email: scott.davis@klarquist.com  
**Derrick W. Toddy** (*pro hac vice*)  
Email: derrick.toddy@klarquist.com  
**KLARQUIST SPARKMAN, LLP**  
121 S.W. Salmon Street, Suite 1600  
Portland, Oregon 97204  
Phone: 503-595-5300  
Fax: 503-595-5301

**Steven M. Bauer, BBO# 542531**

[sbauer@proskauer.com](mailto:sbauer@proskauer.com)

**Kimberly A. Mottley, BBO# 651190**

[kmottley@proskauer.com](mailto:kmottley@proskauer.com)

**PROSKAUER ROSE LLP**

One International Place

Boston, MA 02110

Phone: 617-646-8000

Fax: 617-646-8646

*Attorneys for Earth Products Inc.*